

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GARY ABERNATHY,

Plaintiff,

CIVIL CASE NO: 12-12430

CRIMINAL CASE NO: 08-20103-1

HONORABLE VICTORIA A. ROBERTS

v.

UNITED STATES OF AMERICA,

Defendant.

ORDER DENYING PETITIONER'S CERTIFICATE OF APPEALABILITY

On December 12, 2012, the Court denied Gary Abernathy's ("Petitioner") *pro se* petition for a writ of habeas corpus to vacate his sentence under 28 U.S.C. § 2255, which alleges ineffective assistance of counsel. Petitioner appealed. The Sixth Circuit remanded and holds the appeal in abeyance so that this Court can determine whether to grant a certificate of appealability. The Court **DECLINES** to do so.

A certificate should issue if Petitioner demonstrates a "substantial showing of a denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To warrant a grant of the certificate, "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000).

The Court finds that reasonable jurists could not conclude that this Court's dismissal of Petitioner's claims was debatable or wrong. Therefore, the Court denies

Petitioner a certificate of appealability.

IT IS ORDERED.

S/Victoria A. Roberts

Victoria A. Roberts

United States District Judge

Dated: November 25, 2013

The undersigned certifies that a copy of this document was served on the attorneys of record and Gary Abernathy by electronic means or U.S. Mail on November 25, 2013.

S/Carol A. Pinegar

Deputy Clerk